



Advisory Opinion 08-021

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On June 26, 2008, IPAD received a letter dated June 25, 2008, from Caroline Bell Beckman, an attorney representing the City of Vadnais Heights. In her opinion request, Ms. Beckman asked the Commissioner to issue an advisory opinion regarding the classification of certain data.

A summary of the facts as Ms. Beckman provided them is as follows:

As you know, Minn. Stat. § 429.041 Subd. 1 requires the city to obtain competitive bids for projects over [\$50,000]. Pursuant to that statute, the bids are open [sic] by designated city officers and consulting engineers, and tabulated (ranked) in advance of the future meeting where the council will decide whether to accept the bid of the lowest responsible bidder or reject all bids. Obviously, some time elapses between the time that the bids are tabulated and ranked, and the time that the council takes action as indicated above.

A question has arisen as to when the bids and accompanying material of each bidder becomes public data. Minnesota Statute § 13.591 Subd. 3(a) states that all data in a bidder's response to a bid are private or non-public data until "completion of the selection process," which is defined as when "the government entity has completed its evaluation and has ranked the responses," after which all remaining data by all bidders are public, with certain exceptions.

Issue:

Based on Ms. Beckman's opinion request, the Commissioner agreed to address the following issue:

In a situation where bids are opened and tabulated by designated city personnel prior to the Vadnais Heights City Council deciding to award the contract, what is the classification, pursuant to Minnesota Statutes, section 13.591, of the bids and accompanying materials of each bidder when (1) the bids are opened and ranked by City personnel and (2) when the City Council awards the contract?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified.

In relevant part, section 13.591, subdivision 3(a), states:

Data submitted by a business to a government entity in response to a request for bids as defined in section 16C.02, subdivision 11, are private or nonpublic until the bids are opened. Once the bids are opened, the name of the bidder and the dollar amount specified in the response are read and become public. All other data in a bidder's response to a bid are private or nonpublic data until completion of the selection process. For purposes of this section, "completion of the selection process" means that the government entity has completed its evaluation and has ranked the responses. After a government entity has completed the selection process, all remaining data submitted by all bidders are public with the exception of trade secret data...

According to section 13.591, subdivision 3(a), not until the City has completed its evaluation and ranked the responses do all data submitted by all bidders become public (except for certain trade secret data). Ms. Beckman explained that in the City's process, certain staff open the bids and rank them, and, at a future meeting, the City Council evaluates whether to accept the lowest responsible bidder or reject all bids. The Commissioner assumes that part of the City Council's responsibility also is to make the final determination as to which bidder is the lowest responsible bidder. This assumption is buttressed by language in Minnesota Statutes, section 429.041, subdivision 1 (Council Procedure – plans and specifications, advertisement for bids), that states, "...the council may direct that the bids shall be opened publicly by two or more designated officers or agents of the municipality and tabulated in advance of the meeting at which they are to be considered by the council."

Thus, because the City Council, not City staff, makes the final decision regarding the bids, the evaluation of the bids cannot have been completed until the City Council has made its final decision. At the point in time the bids are opened by City staff, the name of each bidder and the dollar amount specified in the bidder's response are public. At the point in time the City Council makes its final decision as to which bidder will be awarded the contract, all remaining data submitted by all bidders are public with the exception of trade secret data.

Finally, it is important to note that Minnesota Statutes, Chapter 13D (the Open Meeting Law), allows public bodies to discuss not public data at an open meeting without liability or penalty if the disclosure "relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body." (Advisory Opinion 06-016.)

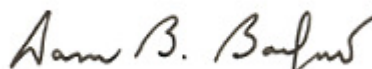
Opinion:

Based on the facts and information provided, my opinion on the issue raised by Ms. Beckman is as follows:

At the point in time the bids are opened by City staff, the name of each bidder and the dollar amount specified in the bidder's response are public.

At the point in time the City Council makes its final decision as to which bidder will be awarded the contract, all remaining data submitted by all bidders are public with the exception of trade secret data.

Signed:



Dana B. Badgerow
Commissioner

Dated:

August 8, 2008